



**MAIL STOP
AMENDMENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: J. Malmberg et al. Attorney Docket No.: FRAB122492
Application No.: 10/798,251 Group Art Unit: 1761
Filed: March 11, 2004 Examiner: T.F. Simone
Title: APPARATUS FOR GAS TREATMENT OF PRODUCTS

RESPONSE

Seattle, Washington 98101

September 2, 2005

TO THE COMMISSIONER FOR PATENTS:

This paper is in response to the Office Action mailed June 9, 2005.

Claims 1-38 are pending in this application. Claims 1-38 were rejected under 35 U.S.C. § 251 as being broadened in a reissue application filed outside the two-year statutory period. Applicants respectfully submit that the rejection is in error.

The Office Action further states that the reissue declaration filed with the application is defective for two reasons: (1) regarding a missing duty to disclose statement and (2) failure to properly reference an earlier foreign application. Applicants respectfully submit that the duty to disclose statement is not missing and request that the noted deficiency be withdrawn or otherwise waived. However, as discussed below, applicants will proceed to correct any remaining defects regarding the duty to disclose statement or foreign priority claims during the pendency of the application.

In view of the remarks that follow, applicants respectfully submit that Claims 1-38 are now in condition for allowance.

Rejection Under 35 U.S.C. § 251

Claims 1-38 were rejected under 35 U.S.C. § 251 as being broadened in a reissue application filed outside the two-year statutory period. Specifically, the Office Action states that

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the reissue application was filed within two years of the patent date, but did not include a statement in an unexecuted declaration establishing an intent to broaden, and the executed declaration was filed outside the two years as a response to a missing parts notice.

Applicants submit that an unexecuted declaration was filed with the reissue application on March 11, 2004, which is verified by the "Notice to File Missing Parts of Reissue Application" mailed from the U.S. Patent and Trademark Office on May 14, 2004 ("The oath or declaration is unsigned."), and further attested to in the "Declaration of Jerald E. Nagae under 37 C.F.R. § 1.132," herein enclosed. The applicants' unexecuted declaration filed on March 11, 2004, includes the following statement regarding an intent to broaden:

We believe the original patent to be wholly or partly inoperative or invalid for the reason that the patentees claimed less than they had the right to claim in the patent. Specifically, the error in the patent upon which the reissue is based is found in the claims, wherein, for example, Claim 1 includes the words "positioned in the return channel (13)." *The foregoing language inadvertently and unnecessarily, limits the scope of the claimed invention and, therefore, such an error results in the patentees claiming less than they had the right to claim.* Accordingly, the Preliminary Amendment filed herewith introduces new Claims 17-36.

(Emphasis added.) Therefore, applicants traverse the rejection and request that Claims 1-38 be passed to allowance.

Reissue Declaration

The Office Action further states that the reissue declaration filed with the application is defective for two reasons. First, the Office Action states that the reissue declaration is defective "because it does not state that the person making the declaration acknowledges the duty to disclose *all* information known to the person to be material to *patentability* as defined in 37 C.F.R. 1.56." (Emphasis in original.) Applicants' declaration does acknowledge the duty of disclosure under 37 C.F.R. § 1.56, as follows:

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We acknowledge the duty to disclose information which is material to the examination of this application in accordance with 37 C.F.R. 1.56.

Thus, applicants submit that the noted deficiency is in error and request that the noted deficiency be withdrawn or otherwise waived.

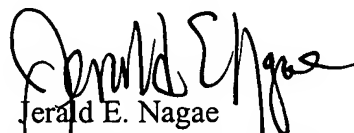
Second, the Office Action states that the reissue declaration filed with the application is defective because applicants did not comply with the requirements of 37 C.F.R. § 1.63(c), claiming or acknowledging the benefit of an earlier filing date, specifically, Swedish Application No. 9900166, filed on January 20, 1999. Applicants' omission of the claim for foreign priority was unintentional. Accordingly, applicants will correct the claim for priority during the pendency of the application as set forth in 37 C.F.R. § 1.55.

CONCLUSION

In light of the foregoing remarks, applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to telephone the undersigned if there are any remaining issues.

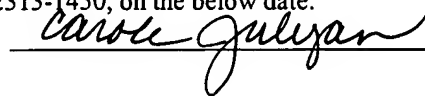
Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: 9/2/05



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